

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Bob Holden, Governor • Stephen M. Mahfood, Director

www.dnr.mo.gov

MEMORANDUM

DATE: October 27, 2004

TO: Land Reclamation Commission

FROM: Richard O'Dell, Environmental Specialist (*original signed by Richard O'Dell*)

SUBJECT: Hearing Request Concerning the Permit Expansion Application sought after by Continental Cement Co. LLC in Gasconade County.

BACKGROUND:

On September 20, 2004, the Missouri Department of Natural Resources Land Reclamation Program received a permit expansion application from Continental Cement Co. LLC. The company published the public notice once a week, beginning on September 22, 2004, for four consecutive weeks in the *Gasconade County Republican*, a newspaper that has circulation in the area. The company sent, by certified mail, a notice of intent to operate a surface mine to the appropriate county officials as well as adjacent landowners. The application proposes that the company will obtain a permit expansion to mine clay on a new two acre site located in Gasconade County; Section 33; Township 42N; Range 05W. The notice states that the site will be in operation until January 31, 2014.

During the public comment period following the initial publication of the public notice, the Staff Director received one letter concerning the proposed Continental Cement Co. LLC permit expansion application. The issues that were addressed in the letter were blasting, timing of excavation, and safety. These issues are addressed in the attachment to the Director's Recommendation.

On October 27, 2004, the Staff Director did inform the person requesting a hearing of the time, location of, and how to prepare for the November 17, 2004, commission meeting.

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Staff Director's Notice of Recommendation

Continental Cement Co. LLC, has in fact completed all the requirements to obtain a permit expansion under the Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the letter, it is the Staff Director's recommendation to issue the permit expansion involving the site located in Gasconade County sought after by Continental Cement Co. LLC. The recommendation for approving this application is based on the conclusion that the public's health, safety or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act, section 444.762, RSMo, does not weigh against the surface mining of minerals in this instance; therefore the recommendation is to approve this application.



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MEMORANDUM

DATE: October 27, 2004

TO: LAND RECLAMATION COMMISSION

FROM: Larry P. Coen, R.G., Staff Director (*original signed by Larry P. Coen*)

SUBJECT: Director's Recommendation – Continental Cement Co. LLC, Permit Expansion Application; Gasconade County.

The following constitutes the Director's Recommendation, that considers the comments expressed in a letter received regarding the mine site.

Staff Director's Notice of Recommendation

The Land Reclamation Act at Section 444.773.3, RSMo, requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit. In addition, the "Act" at 444.773.1, RSMo, requires the Director to consider any written comments or comments expressed at a public meeting when making the notice of recommendation. After consideration of issues and comments provided in the letter, it is my recommendation to issue the permit expansion involving two acres in Gasconade County sought after by Continental Cement Co. LLC. My recommendation of approval of this permit expansion is based on my conclusion that health, safety or livelihood would not be unduly impaired by the issuance of this permit application. The balancing test stated in the declaration policy of the Act at Section 444.762, RSMo, does not weigh against the surface mining of minerals in this instance; therefore the decision is to approve this application.

Required Components of the Recommendation

The Land Reclamation Act requires that the director make a formal recommendation regarding the issuance or denial of an applicant's permit. Rules at 10CSR 40-10.040(1)(A) require that the Director's recommendation be based on several specific items as follows:

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1. The application's compliance with section 444.772, RSMo;
2. The application's compliance with 10 CSR 40-10.020;
3. Consideration of any written comments received or voiced at a public meeting, if held;
4. Whether the operator has had a permit revoked or a bond forfeited; and
5. If a petition is filed and a hearing is held, the commission shall make the decision.

Items 1 and 2: These are basically the same issue stating that the application must meet the criteria for application completeness in both the statute and the rules. After staff review of the permit expansion application from Continental Cement Co. LLC, staff determines that the application document has met the standards of both the statutes and the rules.

Item 3: For the consideration of written comments, please refer to Attachment 1.

Item 4: The company has never had a permit revoked or a bond forfeited, in accordance with the full language of the rules at 10CSR 40-10.040(1)(A).

Item 5: One request that a hearing be held concerning the permit expansion request remains at this time.

Summary Comments

As the commissioners will understand in the following pages, there are a variety of concerns surrounding this proposed operation. The Land Reclamation Act does not provide protection concerning blasting related problems or timing of mineral extraction.

All of the issues raised in the letter did receive a response, and all comments are taken into consideration. As Staff Director I have recommended approval of the pending permit expansion application, because in fact, the company has satisfied all the requirements of The Land Reclamation Act.

Attachment

C: Lee Powell
Continental Cement Co. LLC
PO Box 517
Owensville, MO 65066

Attachment 1

Response to Public Comments Regarding the Proposed Permit Expansion Application Continental Cement Co. LLC Gasconade County

The Staff Director received one letter concerning the proposed Continental Cement Co. LLC permit expansion application for their clay mining operation located in Gasconade County.

The issues raised in the letter are categorized in this attachment. Listed below are these issues with responses of consideration.

Blasting Related Issues

There was a comment that concerned blasting damage.

The company has stated that they do not currently see a need to blast at this site. However, if blasting would become necessary, the following comments would apply.

Detonation of explosives always triggers ground vibrations at specific frequencies that do leave the blast area and resonates structures nearby. When a blast is detonated, some of the energy travels through the ground as vibration. The ground vibration travels mainly on the surface at varying speeds depending upon the density and thickness of the geology. Although perceptible by the structure and people, the energy level decreases rapidly with distance. Many scientific studies have investigated the potential of blast vibrations to damage of residential-type structures. Blast vibrations can be perceptible in a home at great distances from a blast. Structures respond to very low frequency levels of ground vibration. In general, most of the responses by a structure, due to blasting, do not produce damage; rather the structure resonates due to the mechanical frequency of the blast being equal or very close to the natural undamped frequency of the structure. However, it is well documented that specific ground vibrations at specific frequencies can cause damage to a structure, such as a house.

It may prove beneficial for concerned individuals to have a blasting survey taken of their house and property. A blasting survey is usually done before the initiation of a blasting program, however a survey can be performed at any time. The blasting survey usually involves someone documenting all of the walls and other parts of the house for cracks or the lack of cracks. If a large blast does put a crack in a wall where there once was none or if an existing crack becomes larger the survey will provide such documentation.

Another option to consider is having an independent blasting consultant set up a seismograph to monitor the vibrations a residence experiences. Detonation of explosives always triggers ground vibrations at specific frequencies. If the seismograph measures damaging ground movement at a

damaging frequency, during the detonation of explosives, then there is better evidence that the damage caused to a residence is, in fact related to blasting. A review of past blasting records or logs will also provide insights to the amount of explosives detonated.

No one has the right to cause damage to individuals or their property. If a concerned person experiences damage to themselves or their property due to the practices of the neighboring quarry, then they have every right to take civil litigation actions to formally resolve those issues.

Although civil litigation is an option, we recommend that concerned individuals request the company to provide assistance with the blasting survey, seismograph monitoring or any damage claim, although we must emphasize that this would be strictly voluntary for the company. There are no environmental laws that would require the company to do so. However, any concerned person has every right to ask the mining company to resolve these issues and pay the costs to do so. Our contact person with Continental Cement Co. LLC, is Mr. Lee Powell who can be reached by telephone at (573) 690-7741 or you can contact him in writing at PO Box 517, Owensville, MO, 65066. We can and do suggest that Continental Cement Co. LLC should take all necessary precautions when detonating explosives to lessen some of the neighbors concerns. Otherwise, the Department does not regulate blasting related activities and we have no jurisdictional authority to do so.

We do believe that people who live near this operation will experience vibrations from the detonations of explosives. We have no ability at this time to provide aid or relief for anyone concerning the detonation of explosives based on the current wording of The Land Reclamation Act. It is our hope that a positive resolution will take place between concerned individuals and Continental Cement Co. LLC, in order to address blasting related issues.

Safety Barriers

Concerns were expressed regarding the need for safety barriers to prevent injury to people. The Land Reclamation Commission is limited in where and how any safety barriers can be required. The Commission can only require a safety barrier at the perimeter of an excavation if the excavation is within 50' of a right-of-way of any public road when no other barrier exists; or is 50' or closer to any property line and is necessary to mitigate serious and obvious threats to public safety. The safety barrier, if required, must be a minimum of 3' in height. However, local citizens are encouraged to contact Continental Cement Co, LLC to try to resolve any concerns related to this topic.

Timing of Mineral Extraction

The Land Reclamation Commission can not dictate when mining operations can begin. That decision is made solely by the company. If a company applies for a permit and there is no reason for denial of the permit, then the permit must be issued regardless of the timing chosen mineral extraction.

Request for a Meeting or Hearing

The letter received during the public comment period requested that a hearing be held. The decision as to whether or not a formal hearing will be granted rests solely with the Land Reclamation Commission and will be considered at the scheduled November 17, 2004, meeting. A hearing will not be held November 17, 2004. If the Commission grants a request for a hearing, the actual hearing would be scheduled at a later date. The people who request a hearing must present their petition to the Land Reclamation Commission and demonstrate that a basis for that request to be granted exists. This is known as “standing”.

It should be understood that if a hearing is granted, the burden of proof shall be on the applicant for the permit. If the Commission finds, based on competent and substantial scientific evidence on the record of the hearing, that an interested party’s health, safety or livelihood will be unduly impaired by the issuance of that permit, the Commission may deny such permit.